



San Diego County SHERIFF'S DEPARTMENT

NOTICE OF PROPOSED DISCIPLINARY ACTION

2004-316.1

TO: William Campbell, Captain		DATE: July 1, 2005	
It is recommended that the following disciplinary action be administered to the below named employee:			
EMPLOYEE'S NAME:	Gary Gagnon	TITLE:	Deputy Sheriff - Detentions
DEPARTMENT POLICY AND / OR PROCEDURE SECTION(S) VIOLATED:	2.30 Failure to Meet Standards		
	2.46 Truthfulness		
RECOMMENDED DISCIPLINE:	Non-retention of probationary employee		
SECOND LEVEL SUPERVISOR:	Stephen W. Nosal, Lieutenant	DATE:	07/01/05
LIST PRIOR RELATED OFFENSE(S) WITHIN LAST FIVE YEARS WITH DATE & ACTION	None		
I have been advised of the above charges and recommended discipline:			
EMPLOYEE'S SIGNATURE:			DATE: 7-14-05
2 nd LEVEL SUPERVISOR SIGNATURE:			DATE: 7-14-05
3 rd LEVEL SUPERVISOR SIGNATURE:			DATE: 7-14-05
COMMENTS:			
REVIEWED BY INTERNAL AFFAIRS:			DATE: 07-18-05
4 th LEVEL SUPERVISOR SIGNATURE:	M. A. Braatz, Commander		DATE: 08-17-05
COMMENTS:			
ADDITIONAL REVIEW:	D. W. Bonyen, Assistant Sheriff		DATE: 8/17/05
ADDITIONAL REVIEW:	Barry R. Zuniga, Undersheriff		DATE: 8-18-05
ADDITIONAL REVIEW:	William B. Kolender, Sheriff		DATE: 8-18-05
INTERNAL AFFAIRS SECTION			
<input type="checkbox"/> WRITTEN REPRIMAND BY:			DATE:
<input checked="" type="checkbox"/> NOTICE OF INTENT AND CHARGES:	Sergeant-Detentions B. DUKE		DATE: 08-03-2005
<input checked="" type="checkbox"/> ORDER SERVED:	Sergeant-Detentions B. DUKE		DATE: 08-18-2005
<input checked="" type="checkbox"/> CIVIL SERVICE NOTIFIED:	P. Lorenz, AdminSecII		DATE: 08-25-2005
<input type="checkbox"/> PAYROLL NOTIFIED:			DATE:
FINAL ACTION TAKEN:	08-17-2005 Discipline upheld per Skelly; NON-RETENTION		DATE: 08-18-2005

FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

RECEIVED

AUG 26 2005

CIVIL SERVICE
COMMISSION

August 25, 2005
IA# 2004-316.1

TO: Civil Service Commission

FROM: William Kemery, Lieutenant
Internal Affairs Unit

ORDER OF TERMINATION AND CHARGES – GARY GAGNON

The Order of Termination and Charges dated 08-17-2005, filed against Gary Gagnon has been received by the Civil Service Commission on: 8/26/05

Date

Commission Response:

☒ The above individual **HAS** appealed the Order of Termination and Charges.

☐ The above individual **HAS NOT** appealed the Order of Termination and Charges.

Please return this form to the Sheriff's Internal Affairs Unit (MS-O41) as soon as possible.

Thank you.

W. Kemery
William Kemery, Lieutenant
Internal Affairs Unit
(858) 974-2065

Attachment

will argue on 09-07-05
re: appeal

09-07-05 - appeal not granted



RECEIPT OF MATERIALS

EMPLOYEE: GARY GAGNON #3757

Case # 2004-316.1

DESCRIPTION OF DOCUMENT	EMPLOYEE RECEIVED (DATE & INITIAL)	APPOINTING AUTHORITY (Date & Sign)
Notice of Proposed Disciplinary Action to Gary Gagnon dated 07-14-2005	8-2-05	8/3/05
Notice of Intent of Non-Retention and Charges to Gary Gagnon dated 07-21-2005		
Discipline Recommendation & Rationale by Lieutenant Nosal dated 07-01-2005		
Investigative Reports by Sergeant-Detentions K. Zdunich dated 07-01-2005 and attachments		
Skelly Conference Letter to Gary Gagnon		
Order Not to Disclose Materials to Gary Gagnon		
Declaration/Acknowledgement of Personal Service		
Thirteen (13) audio cassette tapes TWELVE (12) BD		



RECEIPT OF MATERIALS

EMPLOYEE: GARY GAGNON #3757

Case # 2004-316.1

[illegible]



San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William B. Kolender, Sheriff

August 17, 2005

Barry R. Zuniga, Undersheriff

Gary Gagnon
[REDACTED]

Dear Deputy-Detentions/CtSvc Gagnon:

ORDER OF NON-RETENTION AND CHARGES, CASE #2004-316.1

I hereby order that you be terminated from your position as a Deputy Sheriff-Detentions/CtSvc (Class #5757) in the Sheriff's Department and the Classified Service of the County of San Diego, for each and all of the following causes:

CAUSE I

You are guilty of Conduct Unbecoming an Officer or Employee as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.4 – Unbecoming Conduct**, in that: You deliberately failed to fully and accurately describe to investigators the events/conversations you witnessed between Corporal Scott Stoll and inmates [REDACTED] and [REDACTED], on August 18, 2004, in Module 4E of the San Diego Central Jail.

CAUSE II

You are guilty of Dishonesty as set forth under Section 7.2(d) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.46– Truthfulness**, in that: You were untruthful during an administrative investigation conducted by Sergeant Kyle Zdunich regarding an incident on August 18, 2004, between Corporal Scott Stoll and inmates [REDACTED] and [REDACTED] at San Diego Central Jail.

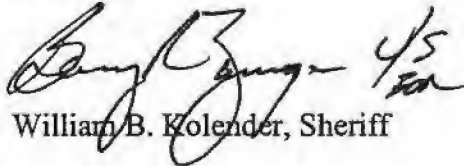
CAUSE III

You are guilty of acts that are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision Values and Goals**. Your conduct constituting such acts inimical to the public service is set forth under Cause I and II above.



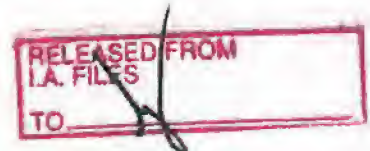
Your attention is directed to Sections 904.1, 904.2, 909, 909.1(k), and 910(k) (1) of the Charter of the County of San Diego and Rule VII of the Civil Service Rules. If you wish to appeal this order to the Civil Service Commission of the County of San Diego, you must file such an appeal and an answer in writing with the Commission within ten (10) calendar days after this order is presented to you. Such an appeal and answer must be in writing and delivered to the Civil Service Commission at its offices at 1600 Pacific Highway, Room 458, San Diego, California 92101, within such ten (10) day calendar period. An appeal is not valid unless it is actually received by the Commission within such a ten (10) day period. A copy of such appeal and answer shall also be served, either personally or by mail, by the employee on the undersigned within the same ten (10) day calendar period.

Sincerely,

A handwritten signature in black ink, appearing to read "William B. Kolender" with a stylized flourish at the end.

William B. Kolender, Sheriff

WBK: pgl



FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**

☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**

☐ **NOTICE OF INTENT TO TERMINATE AND CHARGES**

☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**

☐ **ORDER OF SUSPENSION AND CHARGES**

☒ **ORDER OF NON-RETENTION AND CHARGES**

☐ **NOTICE REGARDING RESTRAINING ORDER DATED**

_____ of which a true copy is attached hereto, by delivering a copy thereof to

GARY GAGNON personally at SAN DIEGO on AUGUST 18, 2005.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18 day of AUGUST, 2005, at SAN DIEGO, California.

BILL DILL
Signature of person making personal service

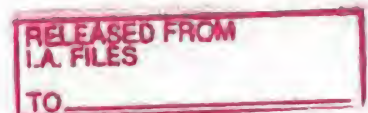
ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 18 day of AUGUST, 2005.

SIGNED [Signature]

IA#





San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William B. Kolender, Sheriff

Barry R. Zuniga, Undersheriff

July 21, 2005

Gary Gagnon



Dear Deputy Sheriff-Detentions Gagnon:

NOTICE OF INTENT OF NON-RETENTION AND CHARGES, I.A. CASE #2004-316.1

Please take notice that it is my intention to recommend to the Sheriff that you not be retained as a Deputy Sheriff-Detentions/Court Services (Class #5757) in the Sheriff's Department and the Classified Service of the County of San Diego, for each and all of the following causes:

CAUSE I

You are guilty of Conduct Unbecoming an Officer or Employee as set forth under Section 7.2 (m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.30 – Failure to Meet Standards**, in that: You deliberately failed to fully and accurately describe to investigators the events/conversations you witnessed between Corporal Scott Stoll and inmates [REDACTED] and [REDACTED], on August 18, 2004, in Module 4E of the San Diego Central Jail.

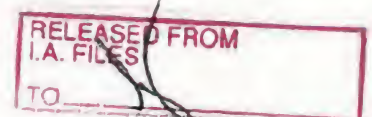
CAUSE II

You are guilty of Dishonesty as set forth under Section 7.2 (d) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.46 – Truthfulness**, in that: You were untruthful during an administrative investigation conducted by Sergeant Kyle Zdunich regarding an incident on August 18, 2004, between Corporal Scott Stoll and inmates [REDACTED] and [REDACTED] at San Diego Central Jail.

CAUSE III

You are guilty of acts, which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego.

"Keeping the Peace Since 1850"



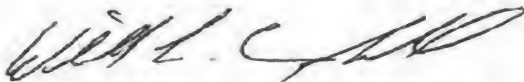
You are guilty of acts, which are incompatible with the San Diego County Sheriff's Department Executive Order and the Mission, Vision, Values and Goals. Your conduct constituting such acts inimical to the public service is that set forth under Causes I and II above.

You have until 4:30 p.m. on August 10, 2005, to respond either orally, in writing, or both, regarding the above proposed charges and discipline. Your response will be considered by the Sheriff before final action is initiated. Upon receipt of this notice you will be provided with all documents possessed by this department upon which this proposed action is based. If you have any questions of said documents, please contact Lieutenant Kemery of the Internal Affairs Unit.

If you wish to respond to the above charges and discipline, please contact Internal Affairs at (858) 974-2065 and you will be provided the name of a Skelly Officer. You should then contact the Skelly Officer without delay, as the conference must be held within ten (10) days, unless waived by mutual agreement. If there are extenuating circumstances precluding you from staying within this time limit, contact Internal Affairs immediately. If you fail to respond, or if your response is unsatisfactory, an Order of Reassignment, Suspension, and Charges will be served upon you and the discipline initiated.

Sincerely,

WILLIAM B. KOLENDER, SHERIFF



William L. Campbell, Captain-Detentions
San Diego Central Jail

WBK:WC:bc



FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**

☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**

☐ **NOTICE OF INTENT TO TERMINATE AND CHARGES**

☒ **NOTICE OF INTENT OF NON-RETENTION AND CHARGES**

☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**

☐ **ORDER OF SUSPENSION AND CHARGES**

☐ **ORDER OF TERMINATION AND CHARGES**

☐ **NOTICE REGARDING RESTRAINING ORDER DATED**

of which a true copy is attached hereto, by delivering a copy thereof to

GARY GAGNON personally at SAN DIEGO on
AUGUST 3, 2005.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3 day of AUGUST, 2005, at SAN DIEGO, California.

[Signature]
Signature of person making personal service

ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 3 day of AUGUST, 2005.

SIGNED [Signature]





COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

August 17, 2005

TO: William B. Kolender, Sheriff

FROM: Gary L. Williams, Captain
Encinitas Station

VIA: Chain of Command

SKELLY CONFERENCE FOR GARY GAGNON #3757

COMMAND RECOMMENDATION

Lieutenant Stephen Nosal recommended non-retention for Deputy-Corrections Gagnon.

SYNOPSIS

Deputy Gagnon is accused of violating Rules of Conduct sections 2.30 Failure to Meet Standards, and 2.46 Truthfulness. These charges stem from an incident wherein it is alleged he witnessed inappropriate behavior on the part of another deputy. When initially interviewed as a witness in the case, Deputy Gagnon admitted knowledge of the inappropriate behavior. After the accused deputy was interviewed, Deputy Gagnon was interviewed a second time, again as a witness, to clarify discrepancies. During this second interview, Deputy Gagnon changed his story significantly, focusing attention on himself. Gagnon's status was changed from witness to accused and he was interviewed a third time. Gagnon essentially repeated the version from his second witness interview during his interview as an accused.

Sergeant-Detentions Kyle Zdunich of the San Diego Central Jail conducted an internal investigation (#2004-316.1) on these allegations and submitted her analysis and conclusions in her investigative report. Sergeant Zdunich sustained the following allegations against Gagnon:

- 2.30 Failure to Meet Standards
- 2.46 Truthfulness

RELEASED FROM
I.A. FILES
TO _____

August 17, 2005

CONDUCT OF SKELLY CONFERENCE

On August 5, 2005, I received notice that I was to conduct a Skelly Conference regarding this case. On August 10, 2005, I conferred with Deputy Gagnon's representative, Attorney Rick Pinckard, and scheduled the Skelly Conference for August 24, 2005.

Attorney Pinckard waived time for the conference. On August 15, 2005, I was contacted by Sheriff's Legal Advisor Robert Faigin. He indicated that Deputy Gagnon's probationary period was to end on August 19, 2005, after calculating leave Deputy Gagnon had taken. For this reason, Mr. Faigin requested the Skelly Conference be conducted prior to that date. I contacted Mr. Pinckard who graciously agreed to conduct the Skelly Conference on August 16, 2005, at 11:00 AM.

On August 16, 2005, I conducted the Skelly Conference concerning the recommendation for non-retention of Deputy Gagnon. The hearing was conducted in the Conference Room at the Encinitas Station. The hearing began at approximately 11:07 AM and I recorded the entire conference with the knowledge and consent of Gagnon and his representative, Attorney Pinckard, who also recorded the conference. My original cassette will be submitted with this report.

I informed Gagnon that the hearing was his opportunity to present any evidence that he felt would be relevant to the charges against him and/or the recommended discipline. I told him that this was not an adversarial hearing and the rules of evidence were such that I would receive any relevant evidence he wished to present. Deputy Gagnon expressed his understanding of the purpose of the hearing and voiced his approval of my service as his Skelly officer.

I confirmed that Gagnon had received and had the opportunity to review the following documents and/or materials:

- Notice of Proposed Disciplinary Action dated 7-14-2005
- Notice of Intent of Non-Retention and Charges dated 7-21-2005
- Disciplinary Recommendation & Rationale by Lt. Nosal dated 7-1-2005
- Investigative Reports by Sergeant-Detentions K. Zdunich dated 7-1-2005
- Skelly Conference Letter to Gary Gagnon
- Order Not to Disclose Materials to Gary Gagnon
- Declaration / Acknowledgement of Personal Service
- Twelve audio cassette tapes

RESPONSE TO CHARGES

I began the meeting by asking Deputy Gagnon and Mr. Pinckard if they wished to make any statements. Mr. Pinckard stated, in essence, that the focus of this investigation



August 17, 2005

revolved around three interviews. After the second interview, the versions of the first two interviews were so far apart that the department felt Gagnon must be lying. In Mr.

Pinckard's view, the third interview was irrelevant as it asked the same questions asked in the second interview. Mr. Pinckard offered that there was no more evidence to support

the department's I.A. conclusion than there was to support Gagnon's position. Mr. Pinckard characterized Gagnon's position that when he was interviewed the first time, he made mistakes, was perhaps careless, not paying attention to detail, and perhaps cavalier.

In his second interview, Gagnon admitted to making a mistake in his initial interview and wanted to clarify his mistakes.

Mr. Pinckard indicated that the sole basis for this adverse action is based on the fact that the department felt Gagnon told the truth in interview number one because Gagnon's statements corroborated the department's theory that the Corporal Stoll had acted inappropriately. When Gagnon's statements in interview number two were not the same, the department did not like that and their position was that he clearly had to be lying. Mr. Pinckard pointed out that the department did not charge Gagnon or Stoll with any kind of conspiracy charge, had no evidence or proof that Gagnon was lying, but charged him anyway due to their theory of what had occurred.

After completing his statement, Mr. Pinckard asked Deputy Gagnon to explain the discrepancies in his first two interviews. In essence, Gagnon reiterated much of the same explanation documented in the I.A.

At one point during our conversation, I told Gagnon that I had listened to the tapes of his interviews earlier in the day and that it seemed to me he was calm, and forthright in his responses during the first interview. During that interview he clearly recalled Stoll telling him about touching the inmate after they exited the module, yet during the second interview he was unsure about specifics, claimed to have been very nervous during the first interview, and remembered Stoll addressing officer safety issues with no mention of conversation regarding the touching of an inmate. Gagnon replied, "I may have seemed calm in there but I was nervous and I just wanted to hurry up and get out of there. I didn't think it was that serious."

I asked Gagnon why he felt compelled to "clarify" his statements from the first interview during his second interview. He stated, "I wanted to make sure that they understood that I was trying to tell the truth. I wasn't trying to fabricate a story to help Stoll in this case or anything. I didn't know it was going to be this big of an issue."

I asked if "anyone" had broached the idea by the time of the second interview that they thought he was being untruthful. He responded, "No."



August 17, 2005

I asked if "they" had made any accusations that they thought he was being untruthful when they started the second interview. He responded, "No, I felt as though I had withheld information that if they interviewed me again I could clarify and make it easier for them so that's what I tried doing."

At about 11:45 AM, I noticed that my tape recorder had stopped. I turned the tape over, addressed the issue on tape, and proceeded with the hearing. Mr. Pinckard offered to send me a copy of his tape the following day. That copy will also be submitted with this report.

Mr. Pinckard acknowledged that Deputy Gagnon had not been a member of the department for a long period of time, thus, the list of potential references was small.

Deputy Gagnon indicated that he only worked with Corporal Stoll for 21 days, and that Stoll had been away from work for some time. Gagnon expressed a desire for me to contact Corporal Richard Madden who works at the San Diego Central Jail. I told him I would consider doing so.

No other points of mitigation were raised. The Skelly Conference was concluded at approximately 11:56 AM.

Later that day at about 3:50 PM, I contacted Corporal Madden by telephone at SDCJ. The conversation was not recorded. I told Madden that his name had been provided as a reference by Deputy Gagnon. In essence, Corporal Madden spoke very highly of Gagnon, stating that he had been Madden's first trainee. Madden has known Gagnon since Gagnon joined the department about a year and a half ago. Our conversation lasted less than five minutes.

DISCUSSION

I have carefully reviewed all written materials pertaining to this investigation and I listened to the recordings of Gagnon's three interviews.

Almost two months passed between the time the alleged inappropriate actions occurred and Deputy Gagnon was interviewed the first time as a witness. His initial recollection of events was consistent with the statements of Sergeant Glover who originally brought this incident to the attention of the command. In listening to the tape of the first interview, it appeared Deputy Gagnon was calm and direct in his answers. The interview was low-key and non-confrontational. His recollection of the events seemed clear. Gagnon did not sound careless, cavalier, inattentive to detail, or mistaken as was characterized by Mr. Pinckard. One of the few points Gagnon was unsure of was whether Corporal Stoll used the term "twisted" or "pinched" when Stoll told Gagnon what he had done to the inmate's nipple when they exited the module. Gagnon also clearly remembers Stoll telling



August 17, 2005

Sergeant Glover about touching the inmate's nipple. Near the end of the first interview, Sergeant Meeks asks Gagnon to clarify when Stoll first told him about the nipple contact. Gagnon does not hesitate and specifically recalls the conversation taking place as soon as they exited the module. The terms *tweak* or *tweaked* were never used by Gagnon or the interviewing sergeants.

Three days after Gagnon's first interview as a witness, Corporal Stoll was interviewed. During this interview, Stoll denies telling Gagnon outside the module that he touched an inmate's nipple. Instead, Stoll states that he addressed officer safety issues. During this interview, Stoll also denies making statements to Sergeant Glover regarding having actual contact with the inmate. Instead, he claims he raised his arms and "went tweak, tweak."

Three days after Stoll's interview, and six days after Gagnon's first interview, Gagnon is again interviewed as a witness to clarify discrepancies brought out by Stoll's interview. Listening to the tape, Gagnon now seems less direct and his recollection of events mysteriously dims. He now recalls Stoll addressing officer safety issues outside the module but is vague as to conversation regarding Stoll's admission to contact with inmates. He is now unsure about conversation between Stoll and Glover and now recalls that Stoll was using hand gestures. He also now begins to remember the term *tweaked* or *tweak* being used by Stoll.

The significant differences between Gagnon's first two interviews cast serious suspicion on his credibility and honesty. In the course of six days, he develops *selective amnesia* and his story more closely coincides with that of Corporal Stoll. He even introduces similar verbiage. In those six days, he comes to the decision that he needs to "clarify" his statements from the first interview, even though he claims not to have spoken to anyone about the case and by his own admission, no one ever expressed to him that he was under suspicion for being untruthful.

I believe the investigation conducted was thorough, but probably became too bogged down in semantics and word games as to the issue of whether the inmate's nipple was touched, twisted, pinched, or tweaked. The issue at hand was Gagnon's truthfulness or lack thereof. I agree with Mr. Pinckard's assessment that the investigation revolved around Gagnon's three interviews. I would concur with Mr. Pinckard's assessment that the third interview could possibly be considered irrelevant except for the fact that as an accused, Gagnon should have been interviewed.

I respectfully disagree with Mr. Pinckard's assessment that there was no more evidence to support the department's I.A. conclusion than there was to support Gagnon's position. I believe Sheriff's Policy and Procedure section 3.2, under Complaint Conclusion, makes my point:



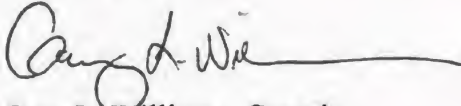
August 17, 2005

The burden of proof in an administrative investigation is "preponderance of evidence," which is defined as such evidence, when weighed with that opposed to it, has more convincing force and the greater probability of truth.

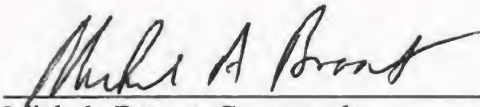
While there is no "smoking gun" as is often the case with investigations of this nature, I believe Gagnon's inconsistencies, coupled with the suspicious timing, clearly tip the scale.

RECOMMENDATION

Non-Retention



Gary L. Williams, Captain
Encinitas Station



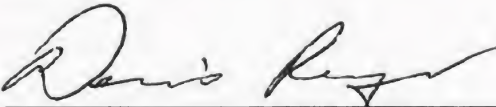
Michele Braatz, Commander
Detentions Operations Area II

☒ Approve [] Disapprove

Date 08-17-05

Comments:






Dennis Runyen, Assistant Sheriff
Detentions Services Bureau

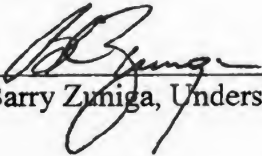
☒ Approve [] Disapprove

Date 8/17/05

Comments:

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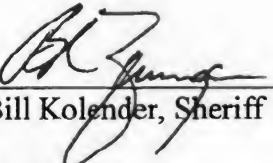
August 17, 2005


Barry Zuniga, Undersheriff

☒ Approve ☐ Disapprove

Date 8-18-05

Comments:

 c/s FOR
Bill Kolender, Sheriff

☒ Approve ☐ Disapprove

Date 8-18-05

Comments:

RELEASED FROM
I.A. FILES
TO 



COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

July 1, 2005

To: William B. Kolender, Sheriff
San Diego County

From: Stephen W. Nosal, Lieutenant
San Diego Central Jail

Via: Chain of Command

Discipline Recommendation and Rationale – Deputy Sheriff – Detentions Gary Gagnon #3757, Internal Affairs Case #2004-316.1

RECOMMENDATION

I have read the investigative reports prepared by Sergeant Kyle Zdunich, and all associated attachments. Sergeant Zdunich found Deputy Sheriff-Detentions Deputy Gary Gagnon in violation of Department Policy and Procedure sections:

- 2.30 Failure to Meet Standards
- 2.46 Truthfulness

I concur with Sergeant Zdunich's findings and conclusions. Based on the nature of the conduct involved, and after weighing the factors in aggravation and mitigation, I recommend Deputy Gagnon not be retained as an employee with the San Diego County Sheriff's Department. Gagnon is a probationary employee until 8-27-05, and his continued employment by the department is not recommended.

RATIONALE

Sergeant Zdunich's investigation was thorough and fair. There is substantial evidence to believe that the conduct, as described, occurred. The rules are clear and understandable. I found no ill motivation or bias by supervisors. There is no action or inaction on the department's part, which led to the employee's conduct.



On February 26, 2005, at 1140 hours, I met with Deputy Gagnon before making my disciplinary recommendation. Gagnon was represented by employee representative Deputy Michael Mercurio. Deputy Gagnon read the Internal Affairs reports related to this case prior to our discussion. I tape recorded the interview and attached the cassette to this report. I also attached two Post-it notes to this report at the request of Deputy Mercurio (See attached envelope).

The facts in this case are as follows. Deputy (then Corporal) Scott Stoll conducted a security check of Module 4E, at the San Diego Central Jail, on August 18, 2004. Stoll's deputy in training, Gagnon, checked the cells on the upper tier, while Stoll checked the lower tier cells. Two green banded inmates, [REDACTED] and [REDACTED], were out in the 4E dayroom, unbeknownst to Stoll and Gagnon. Immediately upon Stoll's entry into the module the inmates jumped out at him and shouted, "Boo." According to Stoll, he reacted by reaching out and pinching an inmate's ([REDACTED] nipple. Right after they completed the security check and left the module, Stoll told Gagnon he pinched the inmate's nipple.

On August 26, 2004, Stoll approached Sergeant Julie Glover to talk to her about the incident. As Gagnon stood nearby, Stoll told Glover how [REDACTED] and [REDACTED] had been in the dayroom together, how they may pose a danger to other deputies and he recommended that they be separated. Glover was surprised when Stoll recounted how he pinched one of the inmate's nipples. Gagnon laughed at Stoll's account while Stoll acknowledged his amusement by saying, "Yeah, even my trainee thought it was funny." Glover was concerned about the appropriateness of Stoll's nipple pinch and advised Sergeant Meeks, who then relayed the story to Zdunich, of the conversation.

Zdunich initiated, and conducted, an internal investigation because of the possible inappropriateness of Stoll's contact with an inmate. During the course of the investigation Gagnon was interviewed three different times regarding what he witnessed or heard Stoll say about the incident, particularly anything involving the pinched nipple. The first interview took place on October 7, 2004, at 0245 hours, and Gagnon was considered a witness. There was a malfunction with the audiotape of the interview and a second interview was conducted immediately after the first, at 0255 hours.

During the recorded interview Gagnon said Stoll told him he pinched an inmate's nipple when he was startled in the dorm. Gagnon also said he heard Stoll tell Sergeant Glover he pinched an inmate's nipple. Gagnon recounted both events in a narrative type explanation of what Stoll told him and Glover.

Sergeant Zdunich interviewed Gagnon a second time, as a witness, on October 13, 2004. During this interview Gagnon changed his account of his conversation with Stoll outside the module and the conversation he witnessed between Glover and Stoll. Gagnon was vague and elusive when trying to explain Stoll's version of pinching an inmate's nipple. Gagnon said Stoll did not say he pinched a nipple, rather Gagnon now explained that he may have deduced that from the hand gesture Stoll used while relaying the story. Gagnon did say Stoll used the word "tweaked" when



explaining the incident to Glover. Gagnon blamed the new version of his account on nervousness and time he had to think over the weekend.

Gagnon was interviewed as an accused, on December 16, 2004, due to his conflicting statements in his previous two interviews. Gagnon essentially repeated the version from his second interview. He said he spoke based on assumptions, at times he misspoke, and sometimes his statements were clouded by his nervousness and other things going on in his life. When Gagnon failed to recall two simple conversations after earlier being easily able to recollect them he was substandard in what is expected of a deputy, even with little experience.

Deputy Gagnon unfortunately changed his account of the incident when interviewed again in the investigation. I do not believe that Gagnon had a memory lapse after his first interview; curiously ensuing versions were remarkably similar to Stoll's interview from that point forward. Still, Sergeant Glover never wavers in her account of Stoll's admission that he pinched an inmate's nipple. Gagnon was not nervous, or prompted, during his first interview when he was sure that Stoll told him separately, and then Glover about the nipple pinch.

The first core value listed in the Sheriff's Department Mission, Vision and Values statement reads:

HONESTY – We are truthful in our words and in our actions.

It is extremely critical to the courts, the department, the public and the employee's career that this core value is never compromised. When a deputy is found to have been untruthful, especially during a formal investigation, all faith and credibility in his current integrity and future veracity will be forever suspect. The resulting absence of believability renders said employee useless in matters requiring believable, sworn testimony by creating a Brady Index situation.

Gagnon's sustained truthfulness violation has created a situation under the Brady decision where results of this investigation will always be susceptible to use as impeachment material whenever he testifies in court. Brady specifically cites several examples of actions which open the door to impeachment possibilities. The following four are specific to Gagnon's conduct in this case:

- Contrary, conflicting statements
- False reports
- Inaccurate reports
- Reputation for untruthfulness

Gagnon has also irreversibly damaged his credibility in matters related to the daily operations of the department. His sincerity will always be challenged and damaging when he is questioned about other employees, inmates' status and matters affecting said inmates, handling county and inmates' property and a wide variety of duties deputies perform where trustworthiness is

paramount. Deputy Gagnon's untruthfulness has the serious potential to affect his own credibility, the department's credibility and public confidence.

During my pre-disciplinary hearing Deputy Gagnon offered some points for mitigation. He said at the time of the first interview he had personal problems, was in training and was very nervous when faced by two sergeants. Gagnon said he felt like he had to have an answer for the sergeant stating, "So I spit out what I could." I find it more than a coincidence that the account he "spit out":

- Had Stoll telling Gagnon that he pinched an inmate's nipple minutes after there was contact between Stoll and the inmates in the module.
- Was almost identical to the version Sergeant Glover told interviewers.

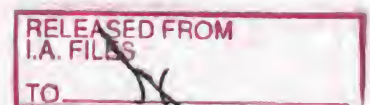
If Gagnon was truly trying to come up with something to tell the sergeants because he felt they wanted to hear something, there are two very troubling aspects to his tale. First, I don't believe he could just "spit out" the identical version as Sergeant Glover. Second, it is distressing that a deputy sheriff would just come up with something rather than stating the facts as he remembers them.

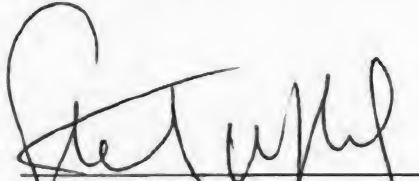
Deputy Mercurio claimed that the investigation was flawed because Zdunich asked leading questions of several witnesses (by mentioning the nipple twist). Gagnon was not asked about a nipple during the first interview, yet volunteered that information with no "prompting" as Mercurio alleges. During the two subsequent interviews, when Gagnon was specifically asked about the nipple twist, he denied that Stoll ever told him or Glover he pinched a nipple.

My recommendation is based on county and department practices as they relate to discipline and Deputy Gagnon's actions in this case. I feel that the recommended discipline is appropriate given the facts in this case.

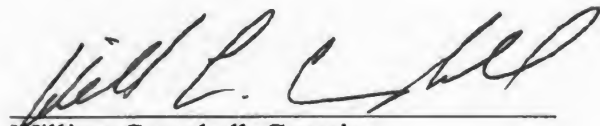
I contacted Internal Affairs and found that Deputy Gagnon has no other prior discipline. Gagnon is a new, probationary employee of the Sheriff's Department. One point toward mitigation is that Gagnon has had no related discipline during his short career. Conversely, all deputies, regardless of tenure, are drilled on the importance of truthfulness and the consequences of lying.

Deputy Gagnon's failure to be forthcoming and truthful during an investigation was deliberate and warrants the only discipline appropriate for that offense, non-retention. His actions have the serious potential to erode department credibility and public confidence. I believe my recommendation is appropriate and proportionate for the conduct. I believe the discipline will also deter others from similar conduct.




Stephen W. Nosal, Lieutenant
San Diego Central Jail

Date: 7-1-05


William Campbell, Captain
San Diego Central Jail

☒ Approved () Disapproved
Date: 7-13-05

COMMENTS: _____

Michelle Braatz, Commander
Detentions Operations Area 2

() Approved () Disapproved
Date: _____

COMMENTS: _____

Dennis Runyen, Assistant Sheriff
Detention Services Bureau

() Approved () Disapproved

Date: _____

COMMENTS: _____

Barry Zuniga, Undersheriff
San Diego Sheriff's Department

() Approved () Disapproved

Date: _____

COMMENTS: _____

William B. Kolender, Sheriff
San Diego County

() Approved () Disapproved

Date: _____

COMMENTS: _____

From the Office of

INTERNAL AFFAIRS - CONFIDENTIAL

Skelly Conference Letter

Case # 2004-316.1

As indicated on the "Notice of Intent" to discipline, which you are receiving, disciplinary action against you is being considered. If you wish to invoke your right to a pre-disciplinary due process hearing on this matter (*Skelly Conference*), you must make the request within five (5) regular business days. The Skelly Conference is a relatively informal hearing, not an adversarial evidentiary trial. The final date to request a hearing is indicated on your "Notice of Intent". Your request should be made by calling the Internal Affairs Unit at (858) 974-2065.

If you do not request the conference within that time, your right to a Skelly Conference will have been waived, and the recommended discipline may be imposed.

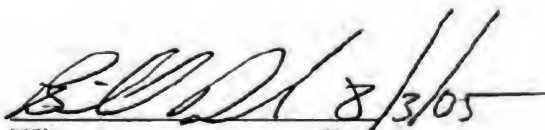
Your Skelly rights are:

1. To receive a written "Notice of Intent" to discipline, which may be served upon you either in person or by mail. That notice will include the level of proposed discipline, the charges, and a brief explanation of the reason for the discipline.
2. To receive a copy of the materials upon which the proposed discipline is based, including reports, tape recordings, photographs, etc. Any item certified as confidential and withheld from you by the department cannot be used as a basis for discipline.
3. To have sufficient time to review the supporting materials so that your response can be prepared.
4. To respond orally, in writing, or both to the proposed discipline and charges.
5. To a hearing officer who is not in your chain of command.
6. To have a representative or attorney present at the hearing.
7. To receive copies of all materials prepared as a result of the Skelly Conference.
8. To receive a new Skelly Conference for any new charges or increased discipline, which arise from the Skelly Conference.

I have read and understand my Skelly rights.


Gary Gagnon

8.3.05


Witness Date



From the Office of

INTERNAL AFFAIRS - CONFIDENTIAL

ORDER NOT TO DISCLOSE MATERIALS

Pursuant to Department Policy, materials are being furnished to you upon which your proposed discipline is based. These materials are reproductions and are a part of the confidential employee personnel records of the San Diego Sheriff's Department. Dissemination of this information is restricted to a need and a right to know.

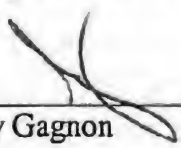
You are ordered not to disclose, release, or copy these materials to or for anyone, other than your attorney and/or association representative, without the written authorization of the Internal Affairs Lieutenant. Materials include all written documentation, tape recordings, and videotapes.

Any unauthorized release of information contained in these documents compromises the confidentiality of your personnel file, and may impede the Department's ability to protect your confidentiality in future discovery motions. This could subject you and the County to unnecessary liability and criticism, to which the Department may be required to defend in a public forum.

You are strongly encouraged to destroy or return these materials when they no longer serve a useful purpose. Should you desire to review material related to your discipline at a later time, you may make arrangements with the Internal Affairs Unit.

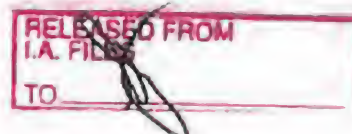
Failure to abide by this order could result in a charge of insubordination, and subject you to disciplinary action up to and including termination.

I have received a copy of this order.



Gary Gagnon

I.A. Case # 2004-316.1





San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William B. Kolender, Sheriff

Barry R. Zuniga, Undersheriff

August 4, 2005

Rick Pinckard
Law Offices of Bobbitt & Pinckard
8388 Vickers Street
San Diego, CA 92111

Re: Deputy Gary Gagnon

Dear Mr. Pinckard:

Your discovery request was received in the Internal Affairs Unit on August 4, 2005.

With regard to your discovery request in the matter of Deputy Gary Gagnon, Deputy Gagnon was provided copies of all materials upon which the proposed action is based, including the audio taped interviews.

A copy of Sheriff's Policy and Procedure, Section 2 (Rules of Conduct) is enclosed, containing the policy sections charged in this case.

Sincerely,

WILLIAM B. KOLENDER, SHERIFF

W. Kemery, Lieutenant
Internal Affairs Unit

#17178

BOBBITT PINCKARD & FIELDS

A Professional Corporation
8388 Vickers Street
San Diego, California 92111-2109

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OFFICE OF
INTERNAL AFFAIRS

EVERETT L. BOBBITT
RICHARD L. PINCKARD
BRADLEY M. FIELDS
JULIE STEELE BUECHLER

ANNETTE BURSTEIN
Legal Administrator

Telephone (858) 467-1199
Facsimile (858) 467-1285
website: coplaw.org

August 4, 2005

Sheriff William B. Kolender
San Diego County Sheriff's Department
P.O. Box 939062
San Diego, CA 92193-9062

VIA FACSIMILE AND US MAIL
(858) 974-2244

Re: Deputy Gary Gagnon

Dear Sheriff Kolender:

Our office represents Deputy Gary Gagnon for the purpose of appeal from the notice of intended discipline served him on August 3, 2005. Deputy Gagnon denies the allegations on which this action is based and requests an opportunity to respond to the allegations at the earliest opportunity. Rick Pinckard will serve as Deputy Gagnon's representative in this matter.

Prior to any disciplinary proceeding our client is entitled to any relevant information related to the proposed discipline. Relevant information includes evidence that has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action, or the truthfulness of a witness's testimony or of a declarant's hearsay statement. (See Evidence Code §210, §780, §1202). Penal Code §135.5¹ has expanded the nature of information that must be provided to a public safety officer during any disciplinary proceeding. It is now unlawful to **conceal** any relevant evidence during the disciplinary process. **Concealment** would include knowingly not providing any relevant evidence.

I recognize some information that may not be relevant to the appointing authority in order to make a decision regarding discipline of a public safety officer would be relevant to my client to disprove the allegations or mitigate the facts or level of discipline. Therefore, I have provided a list of information that we consider relevant to defending our client from the allegations alleged in the proposed notice of discipline. Relevant evidence also includes evidence, which may assist in mitigation of the level of discipline. Please keep in mind the information we are requesting is in addition to that information that must be provided pursuant to Skelly v. State Personnel Board.

In behalf of our client we request the following information:

1. A current copy of all policies and procedures alleged to have been violated by our client.
2. All written reports (as defined by San Diego Police Officers Assn. v. City of San Diego (2002) 98 Cal. App. 4th 779) prepared as a result of the allegations against our client.
3. All investigator notes.

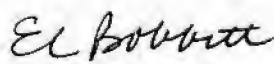
¹ Penal Code §135.5 states "Any person who knowingly alters, tampers with, **conceals**, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor.

4. A copy of all radio transmissions related to this investigation.
5. All written or recorded statements of any potential witness.
6. All prior criminal history of any known potential witness related to this investigation.
7. All information that could lead to or tends to mitigate the conclusions as set forth in the proposed notice of discipline. Information includes any information known to members of your agency whether in a written form or merely within the knowledge of members of your staff.
8. All statements or utterances by our client, oral or written, however recorded or preserved, whether or not signed or acknowledged by our client.
9. The names and addresses of any witness who may have knowledge of the events that caused the discipline to be proposed.
10. An opportunity to examine all physical evidence obtained in the investigation against our client.
11. All laboratory, technician, and other reports concerning the testing and examination of any physical evidence.
12. All reports of experts made in conjunction with the case, involving the results of physical or mental examinations, scientific tests, experimental or comparisons which relate to the allegations as set forth in the notice of proposed discipline.
13. All photographs, motion pictures, or videotapes taken during the investigation.
14. Any exculpatory or mitigating evidence in the possession of your agency.
15. Any information relevant to the credibility of any witness.
16. Any potential rebuttal evidence in the possession of your agency.
17. Any and all relevant evidence known or in the possession of your agency.
18. Any recommendations from supervisory or management staff that differ or contradict the current conclusions or recommendation of discipline.
19. All performance evaluations for the past ten (10) years.
20. Any and all materials reflecting documentation of positive or negative performance maintained in any department files (including Internal Affairs files).
21. Any and all notes, minutes and/or materials from any meetings or discussions involving captains or chiefs in the process of determining the level of discipline to be proposed.
22. Any and all electronically stored data including email and any other computer generated files.
23. Any and all findings of the Citizen's Law Enforcement Review Board relating to this proposed discipline.
24. All discoverable information under Penal Code §1054 as required by San Diego Police Officers Association v. City of San Diego (2002) 98 Cal App. 4th 779.

Any information not provided violates Government Code §3303(g) and subjects your agency to penalty of up to twenty-five thousand dollars plus attorney fees.

Please treat this request as a continuing request until this matter has been settled or adjudicated. Thank you for your anticipated cooperation.

Sincerely,


 rab Everett L. Bobbitt

ELB/rab

cc: Internal Affairs